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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,138	06/13/2001	Rolf Stimer	4070-61PUS	8988
7590 07/15/2004 Thomas C Pontani Cohen Pontani Lieberman & Pavane Suite 1210 551 Fifth Avenue New York, NY 10176			EXAMINER SHAY, DAVID M	
			ART UNIT 3739	PAPER NUMBER
DATE MAILED: 07/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/831,138

Applicant(s)

Sturmer

Examiner

J. Shary

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on April 28, 2004
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11 & 13-15 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-11 & 13-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

The amendment filed May 4, 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: substitution of irradiance values for the power values.

Applicant is required to cancel the new matter in the reply to this Office Action.

The amendment filed February 14, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the particular recitation of 60 mw/cm^2 and the recitation of the cooling unit for cooling the surface to be irradiated.

Applicant is required to cancel the new matter in the reply to this Office Action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-11 and 13-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure does not discuss cooling the irradiated area or particularly recite an irradiance of 60 mw/cm^2 .

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell. Sigurdsson et al teach a method such as claimed but is silent regarding a device for cooling the treated area. Russell discloses that increased patient comfort and safety arises from providing an arrangement for cooling the area to be treated (see column 3, lines 39-65). Thus it would have been obvious to the artisan of ordinary skill to include a skin cooling arrangement as taught by Russell in the cosmetic acne treating method of Sigurdsson et al, since this would provide greater comfort and safety, as taught by Russell, thus producing a method such as claimed.

Claims 11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in combination with Eastlund et al. Eastlund et al teach the desirability of employing a water jacket on a discharge lamp. It would have been obvious to the artisan of ordinary skill to employ a water jacket in the lamp of Sigurdsson et al, since this would cool the bulb and provide spectral filtration, thus producing a device such as claimed.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in combination with Edison. Edison teaches a fluorescent lamp using Calcium Tungstate as the phosphor, which can be coated inside the vacuum tube or inside a tube containing the vacuum tube. Sigurdsson et al teach a fluorescent lamp with the claimed output characteristics. It would have been obvious to the artisan of ordinary skill to employ the lamp of Edison to produce the claimed spectrum, since

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this is useful for treating acne vulgaris, as taught by Sigurdsson et al, or alternatively to employ the phosphor coating of Edison in the lamp of Sigurdsson et al, since Sigurdsson et al teach no particular coating and to employ Calcium Tungstate, since this has a greater power conversion, as taught by Edison, thus producing a device such as claimed.

Claims 3, 4, 6, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell as applied to claim 1 above, and further in combination with Yoshizawa et al. Yoshizawa et al teach an electrodeless discharge lamp powered by a magnetron and situated in a resonant cavity. It would have been obvious to the artisan of ordinary skill to employ filters on the lamp of Yoshizawa et al to produce the claimed output, since this is useful for treating acne vulgaris, as taught by Sigurdsson et al; or in the alternative, to energize the lamp of Sigurdsson et al using the magnetron and resonant cavity of Yoshizawa et al, since this is not critical, produces no unexpected result, and since this configuration provides a longer bulb life than a configuration involving electrodes, and in either case to configure the resonator for E₁₀ mode, since this is not critical and provides no unexpected result, thus producing a device such as claimed.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al combination with Russell as applied to claim 1 above, and further in combination with Hammer et al. Hammer et al teach the use of zirconium oxide on the electrodes of discharge lamps. It would have been obvious to the artisan of ordinary skill to employ zirconium oxide in the bulb of Sigurdsson et al, since this would prevent the formation of oxide rings, as taught by Hammer et al, thus producing a device such as claimed.

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Russell and Yoshizawa et al as applied to claims 1 and 7 above, and further in combination with Edison. Edison teaches the use of Calcium Tungstate as the phosphor in a fluorescent lamp. It would have been obvious to the artisan of ordinary skill to employ the phosphor of Edison, since this phosphor has a greater power conversion, as taught by Edison, thus producing a device such as claimed.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sigurdsson et al in combination with Lundahl et al and Lui et al. Sigurdsson et al teach a method as claimed except treating a T-cell mediated skin disorder, Lundahl et al teach that treatments for acne include using ALA and illuminating it. Lui et al teach that this treatment is also recognized as a treatment for psoriasis. Thus it would have been obvious to employ the acne treatment protocol of Sigurdsson et al, and Lundahl et al since this is recognized as appropriate for psoriasis, thus producing a method such as claimed.

Regarding claims 1-11, 13 and 14, treating acne is a cosmetic treatment.

Applicant's arguments with respect to claim 15 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/dl

July 1, 2004



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330